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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,108

04/16/2004

Donghui Wu

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EXAMINER

VU, NGOC YEN T

ART UNIT

PAPER NUMBER

2622

MAIL DATE

DELIVERY MODE

04/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/826,108	Applicant(s) WU, DONGHUI	
	Examiner NGOC-YEN T. VU	Art Unit 2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Please note that the examiner has changed. Subsequent communications to the Office should be directed to the new examiner.

Response to Amendment

1. The amendments, filed 02/06/2009, have been entered and made of record. Claims 1-25 are pending and considered on the merits.

Response to Arguments

2. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-25 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent and recent Federal Circuit decisions indicate that a statutory “process” under 35 U.S.C 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state of thing. Regarding the independent claims 1 and 23, while the instant claims recite a series of steps or acts to be performed, the claims neither transform underlying subject matter nor are positively tied to another statutory category that accomplishes the claimed method steps, and therefore does not qualify as a statutory process. For example the steps in the red eye removing method the claims 1 and 23 can be performed manually without

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the use of a particular machine. Dependent claims 2-22 and 24-25 are rejected as being dependent upon the rejected claims 1 and 23.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 6, 9, 10, 13 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Luo et al. (US 2005/0047656).

Regarding ***Claim 1***, Luo teaches a method for removing a red eye from an image, comprising:

calculating a weighted red value for each pixel in the image, wherein the weight red value for a pixel is based on (1) red, green, and blue color values of the pixel and (2) a luminance of the pixel in the image (¶0079-0081; Luo teaches that the red eye pixel areas are filtered based on conventional grayscale mapping G , specifically $G1 = 0.299r + 0.587g + 0.114b$);

selecting a plurality of pixels in the image having weighted red values greater than a threshold as red eye pixels (¶0075-0076); and

correcting the red eye pixels to remove the red eye from the image (¶0106-0114).

Regarding ***Claim 6***, Luo teaches the method of claim 1, prior to said correcting, further comprising:

grouping a plurality of red eye pixels that are contiguous into a red eye region (¶0081, 0088-0089);

determining if the red eye region comprises a substantially round pupil (§0082, 0090);
and

rejecting the plurality of red eye pixels when the red eye region does not comprise a substantially round pupil (§0083-0084, 0090).

Regarding **Claim 9**, Luo teaches the method of claim 6, further comprising:

determining if the red eye region is too close to another red eye region formed by grouping another plurality of red eye pixels that are contiguous (§0095-0098); and

rejecting the plurality of red eye pixels when the red eye region is too close to said another red eye region (§0095-0098).

Regarding **Claim 10**, Luo teaches the method of claim 9, wherein said determining if the red eye region is too close to another red eye region comprises:

determining if a geometric center of the red eye region is within a range of distances of another geometric center of said another red eye region, wherein the range of distances is proportional to a pupil radius of the red eye region (§0095-0098).

Regarding **Claim 13**, Luo teaches the method of claim 9, further comprising:

determining if the red eye region is proximate to a facial region (§0091-0094); and
rejecting the plurality of red eye pixels when the red eye region is not proximate to a facial region (§0091-0094) .

Regarding **Claim 18**, Luo teaches the method of claim 13, further comprising:

determining if the red eye region is proximate to a sclera (§0085; 0095, 0117-0123); and
rejecting the plurality of red eye pixels when the red eye region is not proximate to a sclera (§0117-0123).

Allowable Subject Matter

6. Claims 23-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action.

7. Claims 2-5, 7-8, 11-12, 14-17 and 19-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGOC-YEN T. VU whose telephone number is (571)272-7320. The examiner can normally be reached on Mon. – Fri. from 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on 571-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

***/Ngoc-Yen T. VU/
Primary Examiner, Art Unit 2622
04/26/2009***